



## **BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION**

### **Waiver No. 04-010W**

Absent a waiver, a public employee may not hold any employment relationship that would impair that employee's impartiality and independence of judgment. Valerie Ervin, County Councilmember George Leventhal's confidential aide, was recently elected to the County School Board and is requesting secondary employment approval in order to assume her position. The Commission approves Ms. Ervin's request provided that she does not participate in any matter, as Councilmember Leventhal's aide, involving the Board of Education or Montgomery County Public Schools.

The threshold question presented by Ms. Ervin is whether she is subject to the County ethics law's secondary employment provisions given that her secondary employment is elected state office. The Commission answers that question in the affirmative.

The Commission concludes that Ms. Ervin is subject to the ethics law's restrictions on secondary employment even while engaged in political activity. State and County law provide that a public employee may freely participate in the political process.<sup>1</sup> But that freedom to participate in the political process does not necessarily include freedom from the strictures of the public ethics law. In 62 Op. Att'y Gen. 425 (1977), the Maryland Attorney General opined that while a public employee's political activity is protected under state law and may not be automatically banned under applicable ethics laws, that activity is not thereby immunized from ethics review.<sup>2</sup> Thus, the state ethics commission has denied the request of a state employee to serve as an elected official when that outside employment created a conflict under the state ethics law.<sup>3</sup>

Having concluded that Ms. Ervin's service as a school board member is subject to the ethics law's restrictions on secondary employment, our inquiry turns to the substance of those restrictions. Section 19A-12(b)(2) of the ethics law provides that, absent a waiver, a public employee may not hold any employment relationship that would impair that employee's

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<sup>1</sup> Md. Ann. Code art 24, §§ 13-101 to 13-106; County Charter § 405.

<sup>2</sup> This Commission has endorsed this view. *See* Advisory Opinion 97-01 (Feb. 11, 1997) (noting the application of the ethics law to County employees engaged in political activities).

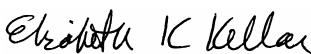
<sup>3</sup> *See* State Ethics Commission Opinion No. 01-01, and cases cited therein, available at COMAR 19A.2001.01.

impartiality and independence of judgment. The Commission concludes that Ms. Ervin's impartiality and independence of judgment as a public employee would be impaired with regard to matters pertaining to the Board of Education. This is especially true of budget matters where the Board must compete with other agencies for limited fiscal resources. Ms. Ervin recognized this conflict in her letter to the Commission: "I have always planned to refrain from advising Councilmember Leventhal as his confidential aide on any matter that involves the Board of Education and more generally the Montgomery County Public Schools."

The Commission may waive the prohibitions of § 19A-12(b)(2) if it finds that the proposed secondary employment is not likely to create an actual conflict of interest. The Commission concludes that Ms. Ervin's service on the Board of Education is not likely to create an actual conflict of interest so long as she does not participate, as Councilmember Leventhal's confidential aide, in any matter that involves the Board of Education and, more generally, the Montgomery County Public Schools.<sup>4</sup>

FOR THE COMMISSION:

November 30, 2004

  
Elizabeth K. Kellar, Chair

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<sup>4</sup> This opinion does not address any ethics provisions that may apply to Ms. Ervin as a result of her school board employment.